

# **Board of Zoning Appeals Rules of Procedure**

## **Article I Organization**

**Section 1. Rules.** These rules of procedure are adopted pursuant to S.C. Code § 6-29-790 for the City of Columbia Board of Zoning Appeals with 7 members appointed by Council, and should be read in conjunction with the laws and constitution of South Carolina and the City of Columbia Code of Ordinances for reference to the authority governing the operation of the Board.

**Section 2. Officers.** The officers of the Board shall be a chairman and vice-chairman elected for one year terms at the first meeting of the Board in each calendar year. The zoning administrator or his designee shall serve as secretary of the Board.

**Section 3. Chairman.** The chairman shall be a voting member of the Board and has the power to:

- a. Call meetings of the Board;
- b. Preside and swear in witnesses at meetings and hearings;
- c. Act as spokesperson for the Board;
- d. Sign documents for the Board;
- e. Decide all points of procedure; and
- f. Perform other duties approved by the Board.

**Section 4. Vice-Chairman.** The vice-chairman shall exercise the duties of the chairman in the absence, disability, or disqualification of the chairman. In the absence of the chairman and vice-chairman, an acting chairman shall be elected by the members present.

**Section 5. Secretary.** The secretary shall:

- a. Provide and publish notice of meetings;
- b. Prepare the agenda;
- c. Properly post property involved in appeals for variances or special exceptions;
- d. Keep minutes of meetings and hearings;
- e. Maintain Board records as public records;
- f. Serve Board orders on parties;
- g. Attend to Board correspondence; and
- h. Perform other duties normally carried out by a secretary.

## **Article II Meetings**

**Section 1. Time and Place.** Regular meetings shall be held on the second Tuesday of each month at 10:00 a.m. in Council Chambers at City Hall. An annual schedule of regular meetings and application deadlines shall be published and posted in the Office of the City Clerk in December of each year. Special meetings may be called by the chairman (or by the Secretary at the request of two members of the Board). Public notice of all

meetings of the board shall be provided by publication in a newspaper of general circulation in the City of Columbia; posted at the meeting location; and delivered to all members of the Board. Meetings shall be held at the place stated in the notice.

**Section 2. Agenda.** A written agenda shall be furnished by the secretary to each member of the Board and shall be posted at the meeting location at least 24 hours prior to a meeting. Items may be removed from the agenda or postponed at a meeting by majority vote.

**Section 3. Quorum.** Four members of the Board shall constitute a quorum. A quorum shall be present before any business is conducted other than rescheduling the meeting.

**Section 4. Cancellation.** Whenever there are no appeals or applications for a variance or special exception to be considered and there appears to be no other business to be transacted by the Board at any regular meeting, other than the scheduled first meeting of the year, the Chairman may dispense with such meeting by notifying each member of the Board not more than five (5) days and no less than twenty-four (24) hours prior to the time for such meeting.

**Section 5. Open to the Public.** All meetings shall be open to the public, except that the Board may go into executive session in accordance with the provisions of the Code of Laws of South Carolina and the ordinances of the City of Columbia.

**Section 6. Rules of Order.** Robert's Rules of Order Newly Revised, latest edition, shall govern the conduct of meetings except as otherwise provided by these Rules of Procedure.

### **Article III Prehearing Procedure**

**Section 1. Form.** Appeals from administrative decisions, applications for variances, and applications for special exceptions shall be filed on forms approved by the Board and provided to applicants by the secretary. The Board may require additional information deemed necessary. The failure to submit a completed application and the required documentation necessary for the Board to address the matter may be grounds for dismissal by the Board. An application filed by an agent shall be accompanied by written designation of the agent signed by the applicant or party in interest.

**Section 2. Calendar and Docket.** Appeals from administrative decisions, applications for variance, and applications for special exceptions shall be marked with the date of receipt and placed on the docket. Appeals and applications shall be placed on the docket in the order in which received unless placed on the consent agenda or otherwise set by the Board for good cause shown. Each appeal or application filed on the proper form shall be numbered serially and docketed. The serial numbers shall begin anew on January of each year and shall be hyphenated with the number of the year in which the appeal is filed.

**Section 3. Time of Hearing.** All cases docketed by the applicable standard application deadline shall be automatically set for the next available hearing, unless a different date is specifically set for such hearing by the Board.

**Section 4. Withdrawal of Appeal or Application.** An appeal or application may be withdrawn by written notice delivered to the secretary prior to action by the Board. Withdrawn applications for variances and special exceptions may be re-filed and shall be placed on the calendar according to the date re-filed. An appeal from an administrative decision that is withdrawn may not be refiled after the 30 day time for appeal (as set forth in 17-111 and 17-112 of the City of Columbia Code of Ordinances) has expired.

**Section 5. Continuances and Deferrals.** The Board may continue or defer an application for good cause shown upon its own motion or at the request of any applicant.

**Section 6. Administrative Deferrals.** The Zoning Administrator or his designee may administratively defer any appeal or application upon good cause shown at any time prior to the call of the matters before the Board; provided, however, that no appeal or application may be administratively deferred more than twice under this subsection absent leave of the Board. The deferral and the reason therefore shall be made known to the Board as soon after the deferral is granted as is practical and the agenda so noted to inform the public of such action.

**Section 7. Notice.** Public notice of a hearing of the Board shall be published in a local newspaper and posted on or adjacent to the property affected at least 15 days prior to the hearing. In addition to any other matters required by law, the notice shall contain a description of each matter to be heard and identify the applicant and property affected.

**Section 8. Consent Agenda.** The Board of Zoning Appeals may use a consent agenda to approve non-controversial or routine matters by a single motion and vote. If a member of the Board or the general public wants to discuss an item on the consent agenda (at the beginning of the meeting), that item is removed from the consent agenda and considered during the meeting. The Board then approves the remaining consent agenda items. If an item is removed from the consent agenda, that item will be heard after old business on the regular agenda.

#### **Article IV Hearing Procedure**

**Section 1. Appearances.** The applicant or any party in interest may appear in person or by agent or attorney. The Board may postpone or proceed to dispose of a matter on the record before it in the absence of an appearance on behalf of an appellant or applicant.

**Section 2. Witnesses.** Witnesses must present testimony under oath or affirmation. Witnesses may be compelled to attend by subpoena requested at least 10 days prior to a

hearing and approved by and signed by the chairman. The Board may call its own witnesses when deemed appropriate. Each witness shall state his or her name and address for the record.

**Section 3. Cross-examination.** No party shall have the right to cross-examine witnesses. Intimidation of witnesses will not be allowed. Contempt of the Board may be certified to the circuit court pursuant to S.C. Code of Laws Annotated Section 6-29-810.

**Section 4. Evidence.** Relevant documents, photographs, maps, plans, drawings, etc., will be received in the record without authentication in the form of legible copies. Relevant testimony which is not cumulative will be received. The chairman will rule on all evidentiary matters. Evidence may be placed in the record with an objection noted.

**Section 5. Conduct of Hearing.**

a. As a guideline, the order of hearing should be:

- (1) Statement by chairman or secretary of matter to be heard;
- (2) Presentation by appellant or applicant (10 minute limit) (subject to time and relevancy, an opportunity for supporters of the appellant or applicant may also be granted);
- (3) Presentation by zoning staff (10 minute limit);
- (4) Presentation by opponents (3 minute limit per opponent). However, a spokesperson for an established body or for a group of three or more may be given five minutes provided the other members of the body or group from who the spokesperson speaks do not otherwise participate; and
- (5) Rebuttal by appellant or applicant (5 minute limit).

b. The Board may question participants at any point in the hearing. Matters in which additional time is granted may be moved to end of the agenda.

c. Modification of Procedure.

- (1) The chair may modify the procedure of hearing.
- (2) Any Board member may move to modify the procedure or to overrule the chair's decision to modify the procedure. Both motions are debatable and require a majority vote in order to be adopted.
- (3) The intent of the rules is that the procedure at the hearing will reflect such concerns as fairness and the importance and complexity of the matter at issue. Therefore, modifications in procedure should be used where a change will substantially improve the decision process and should be made in terms of such concerns as the importance and complexity of the decision, repetition, agenda length, time spent as a result of questions from the Board, and fairness.

d. Matters in which substantial additional time is granted may be moved to the end of the agenda.

**Section 6. Disposition.** Where a quorum exists, the Board may deliberate and make final disposition of a matter by majority vote of members present and qualified to vote. In the

case of a tie vote the motion fails. Every member present must vote unless recused or otherwise disqualified. The vote may be taken at the same or a subsequent meeting. A member may not vote on a matter which he or she has not heard. Deliberating and voting shall be done in public. Where the Board authorizes any variation or imposes any condition with respect to an appeal or application, such variation and condition shall be specifically stated in the motion.

**Section 7. Adjournments.** When all appeals and applications cannot be disposed of on the day set, the Board may adjourn from day to day or to a day certain as it may order and such adjournment day shall be constructed as a continuance of the meeting and no further notice need be given thereof.

**Section 8. Finality of Decision.** A decision of the Board is final upon the certified mailing to the applicant of the signed order reflecting the action taken.

**Section 9. Appeal.** Notwithstanding section 11, appeals from the Board may be made to circuit court pursuant to S.C. Code of Laws Annotated Section 6-29-820, which provides:

A person who may have a substantial interest in any decision of the board of appeals or an officer or agent of the appropriate governing authority may appeal from a decision of the board to circuit court in and for the county by filing with the clerk a petition in writing setting forth plainly, fully, and distinctly why the decision is contrary to law. The appeal must be filed thirty days after the decision of the board is mailed

**Section 10. Rehearing.** No request to grant a rehearing within twelve (12) months of its denial by the Board shall be entertained unless the Board finds that substantial new evidence is submitted which could not reasonably have been presented at the previous hearing, or upon a finding of fraud, misrepresentation or other misconduct of a party.

Requests for rehearing shall be delivered to the Zoning Administrator in writing, setting forth plainly, fully, and distinctly why the decision of the Board is in error, and setting forth the new evidence. Unmeritorious requests for rehearing shall be denied. Testimony is allowed only by leave of the Board if necessary for the limited purpose of developing an understanding of the nature of the request.

Once the request for rehearing is placed on the agenda, the party requesting the rehearing shall be notified to appear before the Board. If a motion to grant a rehearing is approved, the case shall be put on the calendar for a hearing. Rehearing shall be subject to the same notice as original hearings.

**Section 11. Form of Order.** An order, signed by the chairman or vice-chairman, shall be issued disposing of a matter by granting or denying relief with such conditions as may be deemed necessary or by affirming, modifying, remanding, or reversing an administrative decision. A matter may be dismissed for lack of jurisdiction or prosecution. Findings of fact and conclusions of law shall be separately stated in an order. The hearing transcript,

record, and official minutes shall also be considered as evidence and indications of findings and conclusions.

**Section 12. Service of Order.** The secretary shall deliver a copy of an order to the applicant and each party in interest by certified mail immediately upon execution of the order by the chairman.

## **Article V Records**

**Section 1. Minutes.** The secretary or his designee shall record all meetings and hearings of the Board on tape which shall be preserved until final action, including action on any judicial appeals, is taken on all matters presented. The secretary or his designee shall prepare minutes of each meeting for approval by the Board at the next regular meeting. Minutes shall be maintained as public records.

**Section 2. Orders and Documents.** The secretary or his designee shall assist in the preparation and service of all orders of the Board in appropriate form. Copies of all notices, correspondence, documentary evidence, orders and forms shall be maintained as public records.

## **Article VI Amendment and Adoption**

**Section 1. Amendment.** These rules may be amended at any regular meeting or at any special meeting of the Board by majority vote of the members of the Board at least seven days after the written amendment is delivered to all members.

**Section 2. Adoption.** These rules were adopted by vote of a majority of the members of the Board at a regular public meeting on the 11<sup>th</sup> of December 2012.

Attest

  
Secretary

  
Chairman